



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 6, 2019

MEMORANDUM

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6 TO: The Commission
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8 FROM: Lisa Stevenson
9 Acting General Counsel
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11 Charles Kitcher
12 Acting Associate General Counsel for Enforcement
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14 Stephen Gura *SG*
15 Deputy Associate General Counsel for Enforcement
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17 BY: Saurav Ghosh *SG*
18 Acting Assistant General Counsel
19
20 Wanda D. Brown *wdb*
21 Attorney
22
23 SUBJECT: MUR 7597 (Texas Democratic Party, *et al.*)
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25 RE: Factual and Legal Analysis and Pre-Probable Cause Conciliation Agreement
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27 The Commission originally considered this matter as part of MURs 7304 and 7331
28 (Hillary Victory Fund, *et al.*). On April 25, 2019, the Commission voted to close the file in
29 MURs 7304 and 7331 and open a MUR in RAD Referral 17L-36 (Texas Democratic Party, *et*
30 *al.*). The Commission found reason to believe that the Texas Democratic Party and Gilberto
31 Hinojosa in his official capacity as treasurer (the "Committee") violated 52 U.S.C. § 30104(a)
32 and (b) and 11 C.F.R. § 104.3(a) and (b) by failing to report joint fundraising receipts from the
33 Hillary Victory Fund and transfers to the Democratic National Committee on its 2016 September
34 Monthly Report. In addition, the Commission voted to enter into conciliation with the
35 Committee prior to a finding of probable cause to believe, and directed the Office of the General
36 Counsel ("OGC") to circulate a proposed conciliation agreement

37 Finally, the Commission directed OGC to
38 circulate a Factual and Legal Analysis.
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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Texas Democratic Party and **MUR 7597**
6 Gilberto Hinojosa in his
7 official capacity as treasurer
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9 **I. INTRODUCTION**

10 The Reports Analysis Division (“RAD”) of the Federal Election Commission (the
11 “Commission”) referred the Texas Democratic Party and Gilberto Hinojosa in his official
12 capacity as treasurer (the “Committee”) to the Office of the General Counsel (“OGC”) for failing
13 to disclose financial activity totaling \$1,600,000 in its 2016 September Monthly Report.¹ The
14 Commission opens a Matter Under Review (“MUR”) and finds reason to believe that the
15 Committee violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b) by failing to
16 report joint fundraising receipts from the Hillary Victory Fund and transfers to the Democratic
17 National Committee.

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. BACKGROUND**

20 The Committee is a state committee of the Democratic Party.² On September 20, 2016,
21 the Committee filed its 2016 September Monthly Report, which disclosed \$202,535.63 on Line
22 12, “Transfers from Affiliated/Other Party Committees.”³ The Report disclosed no

¹ RAD Referral 17L-36 (Sept. 19, 2017) (“Referral”).

² FEC Form 1, Texas Democratic Party, *Statement of Organization* at <http://docquery.fec.gov/cgi-bin/forms/C00099267/1189744/> (amendment filed Oct. 26, 2017).

³ *Id.* at 1. See also FEC Form 3X, *Report of Receipts and Disbursements for other than an Authorized Committee* at <http://docquery.fec.gov/pdf/694/201609209031044694/201609209031044694.pdf> (filed Sept. 20, 2016). See also Referral at 1.

1 disbursements on Line 22, "Transfers to Affiliated/Other Party Committees."⁴ On March 16,
2 2017, the Committee amended its 2016 September Monthly Report and disclosed \$1,002,535.63
3 in receipts from the Hillary Victory Fund on Line 12, an \$800,000 increase from its original
4 filing, and an \$800,000 disbursement/transfer to the Democratic National Committee on Line
5 22.⁵ The amendment contains a memo stating that the "report is being amended due to an
6 inadvertent data entry error. The amounts now being reported on Line 12 and Line 22 associated
7 with the Hillary Victory Fund were not included in the original report, although the memo entries
8 supporting those amounts were reported."⁶

9 On April 26, 2017, RAD sent a Request for Additional Information ("RFAI") to the
10 Committee that, among other items, requested clarification regarding the "substantial increase in
11 receipts and disbursements disclosed in the amended 2016 September Monthly Report."⁷ The
12 Committee did not respond to that RFAI.⁸ RAD referred the Committee to OGC on September
13 19, 2017, and OGC timely notified the Committee.⁹

14 In response to the referral, the Committee asserts that it inadvertently entered the date of
15 both the \$800,000 receipt from the Hillary Victory Fund and the \$800,000 transfer to the

⁴ *Id.*

⁵ Referral at 1-2. *See also Report of Receipts and Disbursements, Amendment 1*, at <http://docquery.fec.gov/pdf/002/201703169050873002/201703169050873002.pdf> (filed Mar. 16, 2017).

⁶ *Id.*

⁷ Referral at 2. *See also Request for Additional Information* at <http://docquery.fec.gov/pdf/115/201704260300085115/201704260300085115.pdf> (Apr. 26, 2017). On May 26, 2017, the Committee again amended its 2016 September Monthly Report, but disclosed no additional receipts or disbursements.

⁸ *Id.* On June 8, 2017, RAD spoke with a Committee representative and offered the Committee an opportunity to further address the increased financial activity disclosed in the Committee's amended report. The Committee's representative declined, saying that Committee believed its explanation was sufficient.

⁹ Referral at 1. *See also Letter from the Commission's Complaints Examination and Legal Administration Division to the Committee* (Sept. 21, 2017).

1 Democratic National Committee into its database as September 11, 2016, instead of August 11,
2 2016.¹⁰ The Committee explains that because these transactions were in the same amounts, the
3 Committee's cash on hand was not affected, and it therefore did not discover the errors while
4 preparing the Committee's 2016 September Monthly Report.¹¹ The Committee states that when
5 it discovered the errors during a March 2017 review of joint fundraising activity, it immediately
6 amended its disclosure reports, and the Hillary Victory Fund and the Democratic National
7 Committee disclosed both transactions in September 2016.¹² The Committee acknowledges its
8 reporting errors but argues that the case should either be dismissed or referred to the
9 Commission's Alternative Dispute Resolution Office ("ADRO").¹³

10 **B. LEGAL ANALYSIS**

11 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee
12 treasurers to file reports of receipts and disbursements in accordance with the provisions of
13 52 U.S.C. § 30104.¹⁴ These reports must include, *inter alia*, the amount and nature of these
14 receipts and disbursements.¹⁵

15 The Committee violated the Act when it failed to disclose \$1,600,000 in financial
16 activity—\$800,000 in receipts from the Hillary Victory Fund, and an \$800,000 transfer to the

¹⁰ Resp. at 1 (Oct. 24, 2017).

¹¹ *Id.* at 2. The Committee explains it did not immediately discover the incorrect dates for these transactions because the Committee had similar transactions—a receipt from the Hillary Victory Fund and a transfer to the Democratic National Committee—in September 2016, and it mistook those transactions for the transactions that are the subject of this referral.

¹² *Id.*

¹³ *Id.*

¹⁴ See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁵ See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

1 Democratic National Committee—in its 2016 September Monthly Report. These transactions
2 were disclosed approximately six months late, and more than four months after the 2016 general
3 election. Accordingly, the Commission opens a Matter Under Review (“MUR”) and finds
4 reason to believe that the Texas Democratic Party and Gilberto Hinojosa in his official capacity
5 as treasurer violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b).